

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

SUSANNA MIRKIN, Individually and on
Behalf of All Others Similarly Situated

Plaintiff,

v.

XOOM ENERGY, LLC and XOOM ENERGY
NEW YORK, LLC,

Defendants.

Case No.: 18 Civ. 2949 (ARR) (JAM)

**PLAINTIFF SUSANNA MIRKIN AND THE CERTIFIED CLASS'S
NOTICE OF MOTIONS *IN LIMINE***

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law in Support of Plaintiff and the Certified Class's Motions *in Limine*, dated May 20, 2024 ("Motion") and the Declaration of Ethan D. Roman in Support of Plaintiff and the Certified Class's Motions *in Limine*, dated May 20, 2024 and with all exhibits thereto, Plaintiff and the Class, by their undersigned attorneys, will move the Court before the Honorable Judge Allyne R. Ross, at the United States District Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201, on such day and time as counsel may be heard, for an Order granting Plaintiff's Motions *in Limine* to:

1. Find that XOOM bears the burden of proof as to the following: (i) the exact amount of supply costs, if any, that were allegedly added to its otherwise fixed variable rate margins, (ii) the claim that the only costs supposedly added to the fixed margin were proper "supply costs," (iii) that once disaggregated from any supposed supply cost adder, XOOM's monthly variable rate margin over its documented supply costs was constant, and (iv) that if XOOM cannot meet this burden, it is presumed that permissible supply costs were not incorporated into XOOM's margins (Motion *in Limine* ("MIL") No. 1);
2. Find that XOOM cannot offer any new claims about its rate-setting process that were not disclosed in discovery;

3. Preclude the evidence addressed in §§ II–VIII, XI–XII, XIV–XVIII of the Motion (MIL Nos. 2–8, 11–12, 14–18); and
4. Permit the evidence, procedures, and instructions addressed in §§ IX–X, and XIII of the Motion (MIL Nos. 9–10, 13).

Dated: May 20, 2024

WITTELS MCINTURFF PALIKOVIC

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